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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,596	10/30/2001	James P. Baltz	3030-67663	6528
7590 10/21/2003				
BARNES & THORNBURG 11 South Meridian Street Indianapolis, IN 46204			EXAMINER HWU, DAVIS D	
			ART UNIT 3752	PAPER NUMBER 6
DATE MAILED: 10/21/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/016,596

Applicant(s)

BALTZ ET AL.

Examiner

Davis Hwu

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 9, 10, 13, 16 and 17 is/are rejected.
- 7) ☒ Claim(s) 2-8, 11, 12, 14, 15, 18, and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

***Response to Amendment***

1. Applicant's communication of October 1, 2003 is acknowledged and entered as paper number 5.
2. Applicant's remarks have been fully considered, however, they are not persuasive. The rejections stand as follows.
3. All of the appropriate 35 USC paragraphs can be found in the office action of July 9, 2003 and will not be repeated herein.

***Claim Rejections - 35 USC § 102***

4. Claims 1, 9, 10, 13, 16, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Fritz et al.

The patent to Fritz et al. shows a device 20 for positioning an air cap 11 of a pneumatically aided atomizer, the air cap having horns 46 and 47 extending therefrom, the device providing at least one first opening adapted to receive the horns and a first level (see Figure 1) for indicating when the horns received in the at least one first opening are in a first orientation. The device includes a first surface extending generally in a first direction when the horns are received in the at least one first opening and a second surface extending generally in a second direction opposite the first direction when the horns are received in the at least one first opening as recited in claim 4. Regarding claims 9 and 10, the vertical and horizontal orientations as recited are strictly based on a perspective view of the device of Fritz et al. Fritz et al. also shows the method as recited in claim 13.

***Allowable Subject Matter***

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3. Claims 2-8, 11, 12, 14, 15, 18, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

4. Applicant's arguments filed October 1, 2003 have been fully considered but they are not persuasive. Fritz et al. show all of the claimed limitations including a first level for indicating when the horns received in the at least one first opening are in a first orientation. The first level is provided by the abutment surface as pointed out in Figure 1, since the abutment surface aligns and secures the air cap in the atomizer. Indication of the horns being in a first orientation is provided visually when the air cap is aligned and secured.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davis Hwu whose telephone number is 703-305-1663.

The examiner can normally be reached on M-F 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (703)308-2087. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0861.

A handwritten signature in black ink, appearing to read 'Davis Hwu', with a stylized, flowing script.

Davis Hwu